IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6356 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO No

2. To be referred to the Reporter or not? No :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO No

5. Whether it is to be circulated to the Civil Judge? No :

CHHAGANBHAI BHAVANBHAI JETHWA

Versus

STATE OF GUJARAT

Appearance:

NOTICE SERVED for Petitioner

Mr. A.J.Desai for M/S PATEL ADVOCATES for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 18/02/2000

ORAL JUDGEMENT

By means of filing this petition under Articles 226 & 227 of the Constitution, the petitioner has prayed

to issue a writ of mandamus or any other appropriate writ or order, directing the respondents to fix his salary as X'Ray Assistant in the pay-scale of Rs. 260-430 and to award all the consequential benefits.

2. The petitioner joined government service as a peon on September 12, 1960. By an order dated August 5, 1963 which was passed by respondent no.3, he was promoted temporarily as an X'Ray Assistant in Anatomy Department of M.P.Shah Medical College, Jamnagar. Pay-scale of X'Ray Assistant as per the Gujarat Civil Services (Revision of Pay) Rules, 1975 ("the Rules" for short) is Rs. 260-430. A final seniority list of X'Ray Assistant as on April 30, 1985 was prepared on January 4, 1986. In the said list name of the petitioner was shown at serial no.2 in the pay-scale of Rs.260-430 and it was also mentioned that the petitioner was holding the said post with effect from September 6, 1963. Inspite of this position, the petitioner was not awarded the pay-scale of Rs. 260-430, but was paid salary in the pay-scale of Rs.210-270. The petitioner had made several representations to the respondents for the purpose of paying salary to him as an X'Ray Assistant in the pay-scale of Rs.260-430, but no heed was paid by the respondents at all. Ultimately, the petitioner issued notice under section 80 of the Code of Civil Procedure and had instituted Regular Civil Suit No. 878/86 in the Court of learned 3rd Jt. Civil Judge (S.D.), Jamnagar for a declaration that as an 'X'Ray Assistant he was entitled to pay-scale of Rs. 260-430 and that non-payment of the said pay-scale to him was arbitrary, illegal and discriminatory. The petitioner had also claimed consequential benefits. According to the petitioner, the suit was dismissed by the learned Judge holding that the Court had no jurisdiction to entertain such a suit. Under the circumstances, the petitioner has filed present petition and claimed relief to which reference is made earlier.

3. The learned Senior Counsel,who was engaged by the petitioner to plead his case, is already elevated to Bench. Thereupon a notice was issued to the petitioner calling upon him to make arrangement for engaging another lawyer or for his appearance in person. Though the notice is duly served, the petitioner has not engaged any other advocate nor remained present in person for arguing his case.

4. The petitioner has produced a copy of judgment dated December 11, 1987 rendered by the learned 3rd Jt. Civil Judge (S.D.), Jamnagar in Regular Civil Suit No.

878/86 by which his suit came to be dismissed. The reading of the judgment makes it manifest that two different pay-scales are prescribed for X'Ray Assistant in Gujarat Civil Services (Revision of Pay) Rules, 1975. Those who are matriculates are entitled to pay-scale of Rs. 260-430; whereas non-matriculates are entitled to pay-scale of Rs. 210-270. It is wrong to say that the suit was dismissed by the learned Judge on the ground that Civil Court had no jurisdiction to entertain the suit. The judgment makes it very clear that all the different pleas which were raised by the petitioner in the suit are considered on merits by Civil Court. When the petitioner realised that two different pay-scales are prescribed for matriculates and non-matriculates X'Ray Assistants, the petitioner claimed pay-scale of Rs. 260-430 on the principle of 'equal pay for equal work and while dealing with the said point, the learned Judge held that such a relief could not be granted by the Civil Court. The judgment makes it manifest that in the common seniority list of X'Ray Assistants in the State of Gujarat as on April 30, 1985 prepared by the Department name of the petitioner was wrongly inserted and it was wrongly shown that his pay-scale was Rs. 260-430. It is relevant to note that the judgment of the trial Court is accepted by the petitioner and the petitioner has not challenged the same before higher forum. The fact that two different pay-scales are prescribed for matriculates and non-matriculates X'Ray Assistants is not in dispute. The petitioner being non-matriculate X'Ray Assistant, is entitled to pay-scale of only Rs. 210-270. It is not the case of the petitioner that he is not being paid salary in the pay-scale of Rs. 210-270, which is admissible to non-matriculate X'Ray Assistants. The petitioner being non-matriculate, is not entitled to pay-scale of Rs. 260-430. The claim that on the principle of 'equal pay for equal work' the respondents should be directed to pay salary to the petitioner in the pay-scale of Rs.260-430 cannot be entertained. The petitioner is denied the pay-scale of Rs.260-430 on the basis of qualifications. It is well settled that a claimant seeking higher salary on the basis of 'equal pay for equal work' must not only establish that the nature of the work performed by those who are given higher salary, is identical, but also that there was no reasonable basis to treat them separately. Mere similarity in the nature of work of the two groups is not sufficient for invocation of the principle 'equal pay for equal work'. In NATIONAL FEDERATION OF STATE, NFC (PHYSICAL EDUCATION) TEACHERS' ASSOCIATIONS AND OTHERS v. UNION OF INDIA, AIR 1993 SC 369, the Supreme Court ruled that the principle of equal pay for equal work is not

applicable where nature of duties, responsibilities and educational qualifications are different. Where there is difference in qualitative service on the basis of educational qualification, this doctrine is never applied. Under the circumstances, the petitioner cannot be granted the pay-scale of Rs.260-430 on the basis that he is performing similar duties as are being performed by X'Ray Assistants who are matriculates. The result of the above discussion is that no case is made out by the petitioner to direct the respondents to fix his salary as X'Ray Assistant in the pay-scale of Rs. 260-430 and the petition is liable to be dismissed.

For the the foregoing reasons, the petition fails and is dismissed. Rule is discharged, with no order as to costs.

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